STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,476
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare counting income she received as an "Americorp" program participant against her ANFC benefits.

FINDINGS OF FACT

1. The petitioner is the single mother of three children ages 17, 12, and 9. In the Fall of 1997, the petitioner was supporting her children through her employment at a general store, child support payments of $850 per month she received from her children's father, and Food Stamp and Medicaid benefits.

2. In September of 1997, the petitioner decided that she would become a participant in the "Americorp" program designed to help persons with little job experience to gain employment skills and earn money for training. In this program, the petitioner could earn a small "living allowance" (a little over $4.00 per hour) working in a social services agency where she would get not only job training and experience but would also receive an educational award at the end of each year of service. The petitioner planned to use that educational award to pay for her attendance at nursing school and calculated that she

would need to work for two years in order to receive a sufficient amount to pay all her costs ($6,500 plus uniforms and books). As an "Americorp" participant, she went to work for the Central Vermont Council on Aging and was paid $160 per week for a forty hour work week, or $688 per month.

3. As part of her orientation for the program, the petitioner was informed both orally and in writing by the administrators of the "Americorp" program that her "Americorp" living allowance would not be counted against any public benefits she might receive. The administrators of this program are not DSW employees. They have recently corrected their informational handouts to indicate that this income will be counted for purposes of ANFC eligibility.

4. At the time that she began to receive this stipend the petitioner reported it to the Department of Social Welfare because she received Food Stamps and Medicaid. She was told by her worker during a conversation in October or November of 1997, that the "Americorp" money would not affect her Food Stamp or Medicaid eligibility. As the petitioner was not receiving ANFC at that time, there was no conversation between DSW and the petitioner regarding the effect of "Americorp" payments on eligibility for that program.

5. In January of 1998, the petitioner's ex-husband lost his job and stopped making child support payments. The petitioner applied for ANFC benefits on January 21, 1998,

and on the application form reported that she received a "living allowance, not pay", from the "Americorp" program and listed her hours and reimbursement rate. During an interview on January 30, 1998, the petitioner told the worker who handled her application that she understood from her "Americorp" caseworker and literature given to her by that program that her living allowance was not counted as income for ANFC purposes.

6. The worker's response to that statement is disputed. The petitioner understood the worker to have actually confirmed that the Americorp income was not countable. The worker, who was handling 140 cases at that time, has no detailed memory of the conversation but knows that she had questions about the countability of the "Americorp" income because she circled it in red on the application. She did recall that she was unsure about the countability because she knew VISTA living allowances weren't counted but thought she had been required to count "Americorp" income in the past. She doubts based on the information showing her uncertainty that she would have confirmed the exclusion of that income. However, she does not recall expressing her uncertainty to the petitioner at that point and said that most likely she made no comment one way or the other about the income.

7. The worker had intended to investigate the countability of the living allowance but forgot to do so.

She mailed a notice to the petitioner dated February 2, 1998, finding her eligible beginning February 1, 1998, for a full ANFC benefit of $691 per month. Attached to the notice was a computation sheet showing that no income of any kind had been counted against the ANFC benefit.

8. In April of 1998, the worker received a mail message from the quality control division indicating that the "Americorp" income should have been counted against the petitioner's ANFC grant in calculating her benefits and that she had been overpaid as a result. The worker realized that she had made an error and called the petitioner to tell her of the problem. On May 13, 1998, a written notice was mailed to the petitioner informing her that as of June 1, 1998, her ANFC benefits would be decreased to $243 per month because the "Americorp" income, minus some work deductions, was being counted for her eligibility.

9. The petitioner thought some mistake had been made and appealed the decision. She agrees now that the "Americorp" income should have been counted under the regulations but asks that the Department be "estopped" from counting her "Americorp" income from February 1, 1998, until she completes her second year of service in the Fall of 1999, because she had been misled regarding its countability.

10. When asked what different course she would have taken if she had known that "Americorp" was countable in

January of 1998, the petitioner offered various answers. She stated that she might have gotten a part-time job, that she would have saved money, that she might have abandoned the program and worked full-time, and that she might have investigated another program which might not have been countable, such as VISTA, although she added that she knew she was not qualified for VISTA. She did take a brief course to become a license nursing assistant in June 1998, but has not sought employment in that field. In spite of her protestations that she would have taken a different course, and in the face of the certain knowledge now that these benefits will be counted against her for ANFC purposes, the petitioner has continued on ANFC and "Americorp" through September of 1998 and, in fact, has signed up for a second year with "Americorp" to begin in October of 1998.

11. The petitioner also states that if she had known that "Americorp" was countable, she would have been forced to quit the program to survive and would have lost the six months of tuition credit she then had accrued. The petitioner is aware that there is a hardship program for persons who need to leave the program early for a good reason but did not make any inquiries as to whether she might be allowed to do this. Her "Americorp" supervisor confirmed the existence of such a program but stated that she had never received a request for partial payment based

on these kinds of facts and did not know whether it would have been granted. In any event, the petitioner has now completed her first year of service and received a $4,750 tuition payment. No finding can be made that she actually lost any tuition payment by the Department's failure to give her correct information at the inception of her grant.

12. Thirdly, the petitioner argues that she lost child support money due to the Department's misinformation. The petitioner had a child support hearing in March of 1998, at which time she reported the receipt of both "Americorp" and ANFC income. Her ex-husband was ordered to pay $150 per month during a time when his only income was unemployment compensation of $860 per month. The petitioner believes that he would have been ordered to pay more if her rightful income had been reported. She did not, however, ask for a new support hearing when she discovered her new financial situation in May of 1998. Neither did she offer any evidence of what the Court might have decided earlier. The effect this information might have had on her child support order is sheer speculation now as to what the Court might have done then and no facts exist under which a conclusion can be drawn that the petitioner has been harmed thereby.

13. It cannot be concluded from the above facts that the petitioner suffered any damage from the Department's failure to give her the correct information until May of 1998, other than the fact that she was erroneously overpaid

benefits for four months which she may be required to repay through recoupment of her ANFC or through some other method if she becomes financially able to do so. No harm for the future can be found from these facts.

ORDER

The decision of the Department is affirmed.

REASONS

At this point, the petitioner concedes that her "Americorp" benefits are countable earned income in the ANFC program under the Department's regulations at W.A.M. 2253. She asks, however, that the Department be prevented or "estopped" from enforcing this regulation against her because she was misled as to its inclusion at the time she applied for benefits and during the subsequent three months.

In order to receive this extraordinary remedy, the petitioner must show that she meets the four elements of estoppel which are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Stevens v. DSW, 159 Vt. 408, 421; Burlington Fire

Fighter's Association. v. City of Burlington, 149 Vt. 293, 299 (1988).

Applying these elements to the facts herein, it must be concluded that elements one and three are clearly met because the Department knew that it counted "Americorp" income towards ANFC eligibility and the petitioner was unaware of it. In fact, the petitioner believed the opposite which she clearly communicated to the Department.

The Department argues, however, that elements two and four of the above test are not met. With regard to element two, the Department argues that the "Americorp" program administrators, not the Department of Social Welfare, gave the petitioner the misinformation that "Americorp" income was not countable. The Department adds that its employee did not tell the petitioner that the "Americorp" income was not countable during their face to face interview on January 30, 1998, and thus could not have misled her.

The Department is correct that the misinformation regarding the "Americorp" income was first relayed by someone outside of the Department. However, subsequently the petitioner repeated that misinformation in both the written application for ANFC and to the Department's employee during the course of an eligibility interview. At that time the worker either confirmed the petitioner's belief or said nothing. In either case, the petitioner was misled.

The Department's argument that silence is not misleading disregards the clearly established duty of the Department to give persons correct information about their eligibility. Lavigne v. DSW, 139 Vt. 114 (1980). It stands to reason that if an applicant expresses a belief about the countability of her income which is wrong, it is incumbent upon the Department to correct that misinformation. Even if nothing was said to the petitioner, it was reasonable for the petitioner in this case to believe that the Department's silence was a confirmation of her erroneous belief and that she had a right to act on that belief. At the very least, the worker should have told the petitioner on the day of the interview that she was unsure of whether that income was countable or not and that she would look it up and get back to her right away. Her failure to say anything and to instead issue checks without counting that income for the next three months, misled the petitioner as to the countability of her income. Therefore, the petitioner has shown that she was misled and meets the second test in her estoppel argument.

The petitioner's argument, however, falls short when she reaches the fourth and final test. The speculative nature of the harm claimed by the petitioner is set out in detail in the findings of fact. There can be no doubt that it was disappointing and difficult to have to raise her children on less money than she thought she would have had

and that the petitioner was not happy to be put in the position of owing the Department money at a time when she is trying so hard to attain self-sufficiency. However, the evidence does not indicate with any degree of clarity that she would have taken any different steps if she had known the truth.

On the contrary, when the petitioner found out the truth she continued in her "Americorp" program and on ANFC, did not get a supplemental job, did not save money, did nothing to change her support payments and has decided to take the same course for the next year. On the facts presented, it certainly made sense for the petitioner to continue in her work program and to renew it for next year because even with the partial counting (due to work disregards) of her "Americorp" income, the combination of that income ($688), ANFC ($243) and her child support pass-through ($50) undoubtedly surpasses any income she could have received as a minimum wage worker. (About $981 tax free dollars per month.) And, in addition, she was able to receive almost $5,000 in tuition benefits at the end of the year. In the face of these facts, which show that she has been unable to find a better course than the one she originally took to support her children and earn tuition money, it is difficult to find any harm caused by the Department's failure to give her correct information.

The worst that can be said to have occurred to the

petitioner from this event is that an overpayment happened for the months from February through May of 1998, totalling some $1,800.[1] In essence, this overpayment was an interest-free loan, which the petitioner will be required to repay in relatively small amounts from future ANFC payments. This is the kind of hardship created for any recipient who is overpaid through an error of the Department. However, the federal and state regulations do not allow persons to keep illegally paid benefits even though the overpayments were not the fault of the recipient. See W.A.M. 2234.[2].

The petitioner should be aware that any lowered ANFC amount she might have in the future could be brought to the attention of the Court in setting future support payments. To that end, the petitioner and the Department might want to quickly work out the amounts since the petitioner has indicated she has another support hearing scheduled this fall. She can certainly ask the court to consider these deductions in setting any new child support amount she might receive.

Inasmuch as the elements of estoppel are not met, and

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[1] The petitioner has also continued to receive benefits pending her appeal which the Department may also seek to recover. However, this part of the overpayment was created by the petitioner's choice to continue the benefits, not by the Department's error.

[2] Because the error was the Department's, the petitioner would be allowed to keep 95% of the grant payable to a family of the same size who received only ANFC but had no other income. W.A.M. 2234.2.

there being no issue that the petitioner's "Americorp" income is countable for ANFC eligibility, the Department's decision is affirmed. 3 V.S.A. ə 3091(d) and Fair Hearing Rule No. 17.

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